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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/085,239

02/27/2002

Simon Ward

674569-2001

1714

20999 7590 06/25/2008  
FROMMER LAWRENCE & HAUG  
745 FIFTH AVENUE- 10TH FL.  
NEW YORK, NY 10151

EXAMINER

ROYDS, LESLIE A

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

06/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/085,239	<b>Applicant(s)</b> WARD ET AL.	
	<b>Examiner</b> Leslie A. Royds	<b>Art Unit</b> 1614	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: 43,48 and 51.
- Claim(s) rejected: 40-42 and 44-50.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Ardin Marschel/  
 Supervisory Patent Examiner, Art Unit 1614

/Leslie A. Royds/  
 Patent Examiner, Art Unit 1614

Continuation of 3. NOTE:

Applicant's proposed after-final amendment filed June 11, 2008 will not be entered into the record because the proposed amendments to claims 40-42, 44-46 and 48-50 raise new issues that require further consideration and/or search.

Firstly, Applicant proposes amending present claims 40-42 to change the transitional language of the claims from "consisting essentially of" to "consisting", proposes amending present claims 44-46 from "comprising" to "by" and limiting the composition to "consisting of" and further proposes amending present claims 48-50 to change the transitional language from "comprising" to "consisting of". This proposed amendment narrows the scope of the claimed subject matter to only those components specifically recited by the claims. In other words, further consideration of the presently applied art under 35 U.S.C. 103(a) would be required, as well as an additional assessment of the prior art to determine whether such an amendment would obviate the art of record and/or whether additional art would need to be applied.

Secondly, Applicant has also added a new limitation to present claims 40-42, 44-46 and 48-50 directed to the use of one or more pharmaceutically acceptable carriers, diluents or excipients in the claimed pharmaceutical composition. This newly added limitation has neither been previously searched nor considered, and, therefore, clearly raises a new issue that requires further consideration and/or search.

Accordingly, the proposed claim amendments are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal because they raise new issues that require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's request for reconsideration of the present application with regard to the present objections and rejections under 35 U.S.C. 112, second paragraph, and 35 U.S.C. 103(a) in light of the amendments to the claims proposed and presented in the after-final amendment has been made. In light of the fact that the proposed amendments to the claims will not be entered into the record, Applicant's remarks directed to the obviation of these objections and rejections as a result of the proposed amendments are not found persuasive.

Accordingly, in the absence of any additional arguments or remarks regarding the patentability of the instant claims pending at the time of the final rejection, the Examiner defers to the reasons already set forth in the final rejection dated January 11, 2008. In view of the fact that the proposed after-final amendments will not be entered for the reasons explained supra, the claims remain objected to or rejected for the reasons of record previously set forth in the final rejection of January 11, 2008, of which said reasons are herein incorporated by reference.

/Leslie A. Royds/  
Patent Examiner, Art Unit 1614